

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

FILED  
CLERK'S OFFICE  
JANICE STEVENSON,  
Plaintiff,  
v.  
DISTRICT COURT  
DISTRICT OF MASSACHUSETTS  
NEIGHBORHOOD HOUSE CHARTER  
SCHOOL,  
Defendant.

CIVIL ACTION NO. 05-CV-11584-DPW

**PLAINTIFF'S MOTION FOR RULE 11 SANCTIONS AND RESPONSE TO  
DEFENDANT'S MOTION TO COMPEL AND FOR SANCTIONS**

*McLaughlin* decided a split in the circuit courts of appeals by defining "willfulness" under the FLSA as requiring a showing that "the employer knew or showed reckless disregard for the matter of whether its conduct was prohibited by the statute." 486 U.S. at 133; 108 S.Ct. at 1681.

The Court employed this language in light of its adoption of the willfulness standard for liquidated damages under the Age Discrimination in Employment Act in *TWA v Thurston*, 469 U.S. 111, 127; 105 S.Ct. 613, 625; 83 L.Ed.2d 523 (1985), where it defined a "willful" employer for liquidated damages purposes as one who shows a "disregard for the governing statute and an indifference to its requirements." *Accord Dole v. Elliott Travel*, 942 F.2d at 966-967.

The Defendant sent an email to Plaintiff on Wednesday, June 1, 2005, 7:41 p.m. stating:

*the DOL won't know if we're [Neighborhood House Charter School] is in compliance around some things and even if they do know, the penalties are not that bad; ie I'm [Neighborhood House Charter School is] risking the cost (penalties) for the benefit of saving time or money or frustration or whatever."* Attachment 1

In fact, the statements of Attachment 1 and 2 is the Defendant's standard business practices codified. The attorneys have been aware that their client was guilty of willful violation of FLSA from the moment they filed an answer to Plaintiff's complaint. The attorneys had full knowledge that the Defendant "knew or showed reckless disregard for the matter of whether its conduct was prohibited by the statute." 486 U.S. at 133; 108 S.Ct. at 1681. A party acting willfully in violation of FLSA cannot act in good faith and with reasonableness under Section 11. EEOC v. City of Detroit Health Dept., 920 F.2d 355, 358 (6th Cir. 1990) (Equal Pay Act case).

Defendant did not check the legality of Plaintiff's employment arrangements with their attorneys or accountants nor was any written advice rendered by the Defendant's accountant or attorney with respect to Plaintiff's employment agreement either. Instead, Defendant hires attorneys, who are aware of the Defendant's illegal business practices, to mislead this Honorable Court with procedural mumbo jumbo so Defendants can continue their willful violations of state and federal law. Attachments 1 and 2 has been sent to Defendants and various governmental agencies during other administrative complaints against Defendants.

The Attachments are why the attorneys are asking this Honorable Court to preclude Plaintiff from submitting evidence against Defendant. These attorneys want an evidentiary ruling against Plaintiff from this Honorable Court. One who "wilfully" violates the law is not entitled, as a matter of law, to indemnification. Attorneys who knowingly lie should have no standing with this Honorable Court.

Defendant made no effort to check with any government agency about the rightness or wrongness of treating Plaintiff as an independent contractor in 2004.

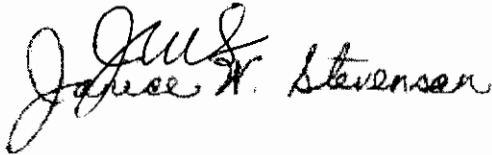
The attorneys have lied to this Honorable Court in their assertion Plaintiff is exempt from FLSA.

**Conclusion**

The Plaintiff moves this Honorable Court to sanction Defendant's attorney who knew of Defendant's disregard for the governing statute and their indifference to its requirements.

For the reasons stated in this motion and memorandum, Plaintiff, asks this Court to sanction Defendant's attorneys for Rule 11 violations.

Respectfully submitted,

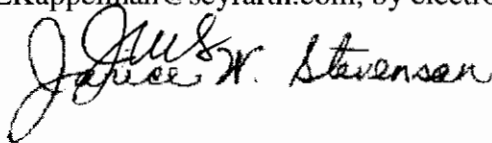


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Dated: April 15, 2006

**CERTIFICATE OF SERVICE**

I hereby certify that this document was filed and that a true copy of the above document was served on Barry Miller, BMiller@seyfarth.com, and Lynn Kappelman, LKappelman@seyfarth.com, by electronic mail on August 15, 2006.



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# ATTACHMENT 1

**From:** Jagdish Chokshi  
**Sent:** Wed 6/1/2005 7:41 PM  
**To:** Janice Stevenson  
**Subject:** RE: MFS Check and report

the DOL won't know if we're in compliance around some things and even if they do know, the penalties are not that bad; ie I'm risking the cost (penalties) for the benefit of saving time or money or frustration or whatever. there are some things for which the letter of the law is inconsistent with it's intent and inconsistent with general practice used by most organizations of our size and complexity and that's where we have to make judgement calls.

Around the 401k stuff, since it's handled by a 3rd party and is extremely well-regulated, we need to be in compliance. it's just one of those items that requires it and doesn't allow for a whole lot of grey area. in addition, it's a service to the staff to make sure that their money gets into their funds accurately and on time, so i'm inclined to make it happen regardless of the law.

you've seen plenty of instances where I have erred on the side of the employee's benefit, rather than the law or our policies — there's a balance here, and with training and with time, these things can be ironed out, but it's an inherent part of HR to have to follow-up on people who don't follow the guidelines. there is a way to train them and the right way probably falls somewhere in the middle, between your approach and my approach. the only reason that I rely on my approach is because I have used it in the past with favorable results. if you can show me how your approach will train people and at the same time provide the service that is our mandate, i'll support it, as I have in the past. but i just don't agree with some of your approaches.

jug

# ATTACHMENT 2

**Stevenson, Janice W.**

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**From:** Janice W. Stevenson  
**Sent:** Monday, April 18, 2005 1:17 PM  
**To:** 'Jagdish Chokshi'  
**Subject:** RE: Emailing: Minimum Daily Hours.doc  
**Attachments:**

Is NHCS an **tax-exempt** organization or charity? The goal of any implementation is sustainability. Yes, let's talk.

janice

-----Original Message-----

**From:** Jagdish Chokshi [mailto:jug@thenhcs.org]  
**Sent:** Monday, April 18, 2005 1:09 PM  
**To:** Janice W. Stevenson  
**Subject:** RE: Emailing: Minimum Daily Hours.doc

thanks janice

it says that this doesn't apply to charitable organizations: that's us.  
so, i have two thoughts:  
one is, what's the rule for charitable orgs?  
two, i think that you're getting much too detailed about how to run this school: let's accept the two facts: one is that it's your job to make me (the org) aware of the regulations that effect us; two is that it is impossible to run an org this size supported by an admin staff this small, if we follow the letter of the law.

one thing to keep in mind is this: yes, it's your job to know the laws and regulations, and it's also your job to help us run this org in a way that allows us perform our mission: our mission is not to run an org that is the center piece of for perfect administration, the mission is to educate kids and to that end, to support the staff in every way possible so that they can educate the kids. we should be making life easier for them, within REASONABLE compliance to the laws. so if a particular law is getting in the way of something that is being done to serve the mission, how do we get around it? this is what i need from you. finding out what laws apply to us is step one. step two is how does this law impact us, and what are the consequences if we don't change our behavior? and step three is, if we don't want to change our behavior, then what are our options?

janice, if followed the letter of the financial law, i would have to hire a full-time book-keeper. given that i would rather use \$\$ for teacher salaries, i HAVE to take short-cuts. i just happen to know where i can take short-cuts and where i can't. so that's how you need to think about approaching your job: where are the short-cuts and how do we support the staff.

we can discuss this in more detail when i get back from vacation.

jug